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LIBEL SUIT/  
WESTMORELAND

BROKAW: Tomorrow in New York, the beginning of what could be called a cosmic trial, retired Gen. William Westmoreland versus CBS News. The charge is libel, and it's the biggest libel case ever to come to trial. Westmoreland is seeking \$120 million in damages. Bob Jamieson reports tonight, the trial will reopen one of the most painful episodes in our history.

GEN. WILLIAM WESTMORELAND (Sept. 13, 1982): There is no way left for me to clear my name. JAMIESON: For now retired Gen. William C. Westmoreland, symbol of America's military involvement in Vietnam, the trial is a matter of honor. For Dan Burt, head of a conservative legal foundation and Westmoreland's lawyer, it is a matter of the accountability of the press. For producer George Crile and CBS News, it is a matter of integrity and reputation. For the public, it is a matter of credibility, the military command or the media. At issue is the 90-minute CBS documentary, The Uncounted Enemy: A Vietnam Deception. It described a period of official optimism about the war, focused in 1967 before the sudden shock of the 1968 Tet offensive. MIKE WALLACE (from documentary): And tonight, we're gonna present evidence that we've come to believe was a conscious effort, indeed a conspiracy at the highest levels of American military intelligence, to suppress and alter critical intelligence on the enemy in the year leading up to the Tet offensive.

JAMIESON: The documentary featured many intelligence officers from Westmoreland's staff. It charged the general deliberately put a ceiling on estimates of enemy

troop strength to make the war seem winnable, a strength lower than his own intelligence officers were reporting. Westmoreland, whose lawyer has prohibited pre-trial interviews with the general, denies there was any deception. There was, he says, a debate over intelligence estimates between him and the CIA. DAN BURT (Capital Legal Foundation): How many could you count, that was the issue. How many and who should you.

JAMIESON: Burt charges the documentary was simply an effort to get Westmoreland. BURT: I don't think any institution in this society can exist unless it's accountable.

*Bob Jamieson Comments  
on the CBS/Westmoreland  
Trial*

continued

JAMIESON: Burt claims the documentary ignored key witnesses favorable to Westmoreland such as Gen. Phillip Davidson, his intelligence chief at the time. And Burt says some of the documentary's editing distorted what Westmoreland and others said to stack the case against the general. In part, Burt is supported by CBS's own in-house investigation, which found serious flaws with parts of the program. The CBS investigation said that 'a judgmental conclusion of conspiracy by the documentary was inappropriate.' GEORGE CRILE (producer of documentary): I'm very proud of the broadcast, and I think that we did something important.

JAMIESON: That put producer George Crile as much in the center of the controversy as Westmoreland. Crile contends the flaws don't change the documentary's substance. CRILE: The witnesses that formed the whole core of the broadcast are Gen. Westmoreland's own intelligence officers.

JAMIESON: The trial beginning here tomorrow is the most significant test yet of a 20-year-old Supreme Court rule giving the press and broadcasters wide latitude to criticize public officials, and constitutional law experts worry that win or lose, Westmoreland has already intermediated the press in the name of all public officials. Harvard Law School's Lawrence \*Tribe. LAWRENCE TRIBE (Harvard Law School): I might simply steer clear of controversial documentaries and reports. The whole nation would be worse off if that were to occur.

JAMIESON: One positive outcome of this trial may be a new insight into how we lost the war in Vietnam. More than 80 former military officers and civilian officials, including key policymakers who have never before spoken publicly about the war, are scheduled to testify. Bob Jamieson, NBC News, New York.